

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**April 14, 2004**

**IN RE:**

**PETITION OF LIGHTYEAR COMMUNICATIONS, INC.,  
LIGHTYEAR TELECOMMUNICATIONS LLC, AND  
LIGHTYEAR NETWORK SOLUTIONS, INC. FOR  
AUTHORITY NECESSARY TO CONSUMMATE A  
CORPORATE REORGANIZATION**

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**DOCKET NO.  
03-00634**

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**ORDER APPROVING TRANSACTIONS AND  
CUSTOMER NOTIFICATION LETTER**

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This matter came before Chairman Deborah Taylor Tate, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at the February 23, 2004 Authority Conference and at a hearing held on March 4, 2004 for consideration of a Joint Petition filed by Lightyear Communications, Inc. ("Lightyear"), Lightyear Telecommunications LLC ("Lightyear Telecom" – together with Lightyear the "Lightyear Companies"), and Lightyear Network Solutions, LLC ("LNS") requiring TRA approval under Tenn. Code Ann. §§ 65-4-112 & 113 and Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d).

**Statutory and Regulatory Framework**

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain prior TRA approval to transfer its authority to provide utility services in Tennessee (also known as a "certificate of public convenience and necessity" or "CCN"). Tenn. Code Ann. § 65-4-113(a) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) includes the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

TRA approval of mergers between public utilities holding a CCN in the State of Tennessee is required under Tenn. Code Ann. § 65-4-112(a), which provides as follows

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Finally, when a customer base is transferred from one telecommunications service provider to another, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria have been met:

- 2 A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
- 3 The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4- 2-.56(2)(d)(2) shall inform the customer of this provision.

## **Background**

Lightyear was certificated in the state of Tennessee to provide resold and facilities based interexchange and local exchange telecommunications service on July 31, 1995 in TRA Docket No. 95-02612, on January 12, 1999 in TRA Docket No. 98-00674, and on February 22, 2001 in TRA Docket No. 00-00996. Lightyear Telecom was certificated to provide interexchange telecommunications services on September 1, 1998 in TRA Docket No. 98-00374. In recent years, Lightyear has been experiencing an erosion of its customer base due to lack of funds, and Lightyear Telecom is currently serving no customers in the State of Tennessee. On April 29, 2002, the Lightyear Companies were forced into bankruptcy by their creditors and, since that time, have been operating under the protection of the United States Bankruptcy Court for the Western District of Kentucky

## **The Joint Petition**

The Joint Petition, which was filed with the TRA on December 15, 2003, describes a series of transactions approved by the Bankruptcy Court through which LNS will acquire substantially all of the assets of Lightyear and Lightyear Telecom and, as a result, will become the provider of telecommunications services to the Tennessee customers of Lightyear. This sale of assets and resulting transfer of authority and customer base are scheduled for completion on March 31, 2004 and are expected to help facilitate the emergence from bankruptcy of Lightyear and Lightyear Telecom and to allow the customers of Lightyear to receive continuous uninterrupted service. The transfer should not result in any change in the rates, terms, or conditions of service for the customers of Lightyear.

LNS is a newly created limited liability company that will apparently be staffed by the senior management teams of the Lightyear Companies. LNS will also benefit from the daily input of the chief executive officer of the parent company of Lightyear and Lightyear Telecom and will have at

its disposal the financial resources of its own parent company, LY Acquisition, LLC, in order to rebuild its customer base and make it a more competitive provider of telecommunications services.

In order to notify Lightyear customers of the change in service provider, the Parties have also sought approval of a customer notification letter. TRA Rule 1220-4-2-.56(2)(d) provides that, in case of a transfer of customer base from one telecommunications service provider to another, the TRA may deem that the provider whose customer base is being acquired has met the notification requirements of the TRA's anti-slamming rules by sending a letter to its affected customers notifying them of the change in provider. This rule requires TRA approval of the letter and, by implication, of the transfer of customer base. The customer notification letter submitted by the Parties complies with the requirements of the rule, however, the Joint Petition does not specify whether the name and logo of both Lightyear and LNS would be included on both the letter and envelope or whether the notification letter would be sent at least thirty days before the transfer of customer base.

### **Findings and Conclusions**

At the February 23, 2004 Authority Conference, the Directors voted unanimously to approve the Joint Petition as it pertains to the requirements of Tenn. Code Ann. §§ 65-4-112 and 113 pursuant to a finding of statutory compliance. At this Conference, the Directors also addressed with counsel for the Parties<sup>1</sup> the potential deficiencies in the customer notification letter as well as the applicable termination provisions and the reinstatement of any existing carrier freeze following the transfer. Based upon the representation that the customer notification letter had not yet been sent to Lightyear's customers, the Directors voted unanimously to approve the customer notification letter with the following stipulations: (1) that Lightyear include the names and/or logos of both Lightyear and LNS on both the letterhead and the envelope, (2) that customers be given at least thirty-days notice before any transfer of services; (3) that the language in the customer notification letter in

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<sup>1</sup> Shelby Sheffield of Waller Lansden Dortch & Davis appeared in person on behalf of the Parties

paragraph four related to termination charges be removed and language be added such that any customer may choose another carrier in a manner consistent with their contract with Lightyear; and (4) that language be added to the customer notification letter such that any freeze removed by Lightyear will be reinstated without charge. The Directors also voted unanimously to require a revised customer notification letter be filed with the TRA by February 27, 2004 so that TRA Staff may determine its compliance with these requirements.

In a letter dated February 24, 2004, counsel for the Parties<sup>2</sup> informed the TRA that the customer notification letter had been sent in January 2004 via customer bill insert as part of the self-certification process of the Federal Communications Commission ("FCC") and in order to meet the ninety-day notice requirement of other states. The Parties requested approval of the notification letter notwithstanding the Director's previous stipulations. Pursuant to this request, the notification letter was scheduled for reconsideration by the Directors on March 4, 2004.

In the February 24, 2004 letter and at the hearing of this matter on March 4, 2004, counsel for the Parties<sup>3</sup> addressed each of the stipulations addressed above as follows: (1) the Parties need not include an old and new logo on the letterhead and envelope since LNS will be adopting the logo currently in use; (2) the Parties will be unable to provide an additional thirty-day notice prior to completion of the transactions scheduled for March 31, 2004, (3) the language in the notification letter regarding termination provisions is consistent with applicable service contracts; and (4) the "freeze" provision in the notification letter is required by the FCC, whether or not applicable, but in any case, customers will not incur any cost to have a freeze reinstated since any existing freeze will be over-ridden solely for the purpose of this customer base transfer.

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<sup>2</sup> Douglas Orvis, II and Danielle Burt of Swidler Berlin Shereff Friedman

<sup>3</sup> Shelby Sheffield and Billye Sanders of Waller Lansden Dortch & Davis appeared in person and Douglas Orvis of Swidler Berlin Shereff Friedman participated telephonically on behalf of the Parties. Linda Hunt, manager of regulatory affairs for Lightyear Communications, also participated telephonically

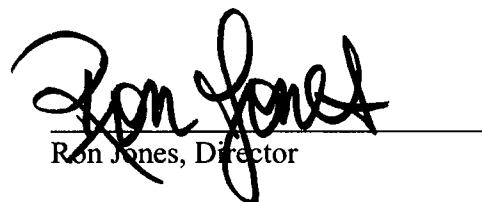
Based on these representations, the Directors found that the concerns expressed at the February 23, 2004 Authority Conference had been adequately addressed by the Parties and voted unanimously to approve the customer notification letter sent in January 2004. The Directors also ordered that a second notification letter be sent to all customers acquired by Lightyear after the issuance of the January 2004 bill insert. For this purpose, the Directors unanimously agreed to waive the thirty-day notice requirement.

**IT IS THEREFORE ORDERED THAT:**

1. The sale of assets as described in the Joint Petition and herein is approved.
2. The transfer of CCNs as described in the Joint Petition and herein is approved.
3. The customer notification letter submitted for TRA approval on October 20, 2003 and sent to customers in January 2004 is approved
4. The transfer of customer base as described in the Joint Petition and discussed herein is approved.
5. A customer notification letter shall be sent to all customers acquired by Lightyear after the notification letter was sent in January 2004.
6. For the purposes of this second customer notification letter, the thirty-day notice requirement is waived.

  
Deborah Taylor Tate, Chairman

  
Sara Kyle, Director

  
Ron Jones, Director